

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VANESSA BENAVIDEZ;
and STELLA PADILLA,

Plaintiffs,

v.

Civ. No.

NATALIE HOWARD; Albuquerque City Clerk;
JESSICA HERNANDEZ, City Attorney;
WILLIAM ZARR, Assistant City Attorney;
and NICHOLAS BULLOCK, Assistant City Attorney,

Defendants.

**COMPLAINT TO RECOVER DAMAGES DUE TO DEPRIVATION OF CIVIL
RIGHTS/VIOLATIONS OF THE UNITED STATES AND NEW MEXICO
CONSTITUTIONS**

Plaintiffs bring this action to recover damages for violations of their civil rights pursuant to 42 U.S.C. 1983 and 42 U.S.C. 1988, freedom of speech guaranteed under the First Amendment of United States Constitution, and Article II, Section 17 of the New Mexico Constitution.

INTRODUCTION/STATEMENT OF THE CASE

Plaintiffs Vanessa Benavidez and Stella Padilla, are community activists that play active and consistent roles in promoting transparent good government. Plaintiff Padilla was a candidate for Mayor of Albuquerque during the 2017 election and became involved in an election dispute over petition signatures with Defendant Howard in State District Court in Case No. *D-202-CV-2017-03556*.

During the course of the litigation, Defendants took action through the filing of an improper Rule 26 Motion for Protective Order (EXHIBIT A) with the intent and for the

purpose of silencing/chilling Plaintiffs right to engage in Free Speech that was critical of their City of Albuquerque government and to prevent them from exercising their right to Petition their government for redress, through a vindictive prosecution. Defendants intentionally and knowingly violated Plaintiffs Civil and Constitutional Rights guaranteed by the 1st Amendment in a coordinated effort to silence their criticisms of the activities conducted by the City of Albuquerque employees.

PARTIES

1. Plaintiff Vanessa Benavidez currently resides, and at all times incident to this Complaint resided, in Albuquerque, New Mexico.
2. Plaintiff Vanessa Benavidez currently resides, and at all times incident to this Complaint resided, in Albuquerque, New Mexico.
3. Defendant Natalie Howard is the City Clerk for the City of Albuquerque.
4. Defendant Jessica Hernandez is the City Attorney for the City of Albuquerque.
5. Defendant William Zarr is an Assistant City Attorney for the City of Albuquerque.
6. Defendant Nicholas Bullock is an Assistant City Attorney for the City of Albuquerque.

JURISDICTION AND VENUE

7. This action arises under the First Amendment of the United States Constitution, and 28 U.S.C. § 1343, 42 U.S.C. § 1983 and 42 U.S.C. § 1988.
8. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the Parties pursuant of 28 U.S.C. §§ 1331 and 1343.
9. The Court has authority to grant the requested relief pursuant to 28 U.S.C. §1343(a)(1) and (2) and to redress the deprivation under 28 U.S.C. § 1343(a)(3). This Court also has

authority to grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

10. Venue lies in this district pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND

11. Plaintiffs are community activists that commonly participate in and are active in their City of Albuquerque government.

12. Defendants acting in concert filed a Motion for Protective Order against Plaintiffs on June 12, 2017.

13. The Motion sought to curtail Plaintiffs' First Amendment rights by requesting that the Court issue an order "prohibiting any such persons from engaging in conduct directed at Defendant's person..." by preventing them peaceably contacting the Albuquerque City Clerk or Petitioning the City Clerk. (*See* EXHIBIT A, pg 6)

FIRST CAUSE OF ACTION: VIOLATION OF FIRST AMENDMENT RIGHTS BY DEFENDANTS

14. Plaintiff re-alleges each of the above paragraphs as if fully set forth herein.

15. The First Amendment of the United States Constitution protects an individual's freedom of expression/freedom of speech and the individual's right to petition her government for redress.

16. Defendants prepared and filed a Motion for Protective Order, inconsistent with NMRA Rule 26, without justification and cause, solely to harass Plaintiffs and prevent the continued criticism of City of Albuquerque employees and to deny Plaintiffs the right to petition their government for redress.

17. Defendants had no legitimate basis or cause to file the Motion for Protective Order against Plaintiffs

18. Defendants, by filing a retaliatory and malicious Motion for Protective Order against Plaintiffs violated the Plaintiffs' rights to freedom of speech and to petition the government for redress guaranteed under the United States and New Mexico Constitutions.

19. As a direct and proximate result of the retaliatory and vindictive prosecution, Plaintiffs suffered injuries consisting of their deprivation of a Constitutional Right for which Defendants are liable.

20. The Defendants are also subject to punitive damages for their conduct.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for:

1. A trial on the merits before a jury;
2. A declaration that the actions of identified Defendants described in this Complaint violated Plaintiffs' Constitutional rights under the First Amendment of the United States Constitution and Article II, Section 17 of the New Mexico Constitution;
3. General and specific compensatory damages according to proof;
4. Punitive damages in such amount as will sufficiently punish defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
5. Interest on such damages awarded at the legal rate from the date of judgment until paid;
6. An order granting Plaintiffs' costs and attorney fees; and
7. Any and all other relief that may be appropriate as deemed by this Court.

Respectfully submitted this 21st day of September 2017.

/s/ Dori E. Richards, Esq.

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